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Supreme Court of Texas Holds that Juries Must Provide Rational Connection to Explain Amount of Non-Economic Damages Awarded for Emotional Injuries



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CASE ALERT!

Supreme Court of Texas Holds that Juries Must Provide Rational Connection to Explain Amount of Non-Economic Damages Awarded for Emotional Injuries

The Supreme Court of Texas recently held in *Gregory v. Chohan*, that there must exist a **rational connection** between the amount awarded and the evidence of the ‘nature, duration, and severity’ of non-economic damages suffered by a plaintiff in cases involving emotional injuries such as mental anguish in wrongful death causes of action. *Gregory v. Chohan*, No. 21-0017, 2023 WL 4035886 (Tex. June 16, 2023). This decision creates a new standard for awarding non-economic damages related to emotional injuries such as loss of companionship, mental anguish, and mental pain and suffering in wrongful death cases on appeal.

In the opinion delivered by Justice Blacklock and joined by Chief Justice Hecht and Justice Busby, the Supreme Court of Texas reversed the Fifth Court of Appeals’ decision to uphold a \$39 million jury verdict which apportioned \$16.8 million to the family of Bhupinder Deol, a truck driver who was killed in the accident caused by negligent conduct of Defendant Sarah Gregory. The Deol family brought a wrongful death action against Defendant Sarah Gregory and her employer, Defendant New Prime Trucking Company, in which over \$15 million of the total award was awarded for past and future mental anguish and loss of companionship. The opinion held:

“In sum, to survive a legal-sufficiency challenge to an award of noneconomic damages, a wrongful death plaintiff should bear the burden of demonstrating both (1) the existence of compensable mental anguish or loss of companionship and (2) **a rational connection, grounded in the evidence, between the injuries suffered and the amount awarded.**” *Id* at 26 (emphasis added)

Problematic Approaches--“Anchoring”

At the trial level, the *Gregory* Plaintiffs attempted to support the large request for damages by employing a tactic some refer to as “unsubstantiated anchoring.” The Court explained this is “a tactic whereby attorneys suggest damages amounts by reference to objects or values with no rational connections to the facts of the case.” *Id* at 17. A \$71 million F-18 Fighter Jet and a \$186 million Mark Rothko painting were among the analogies used by counsel with the purpose of getting jurors to think about the appropriate damages award by comparing the figure with the magnitude of the objects presented. The Supreme Court of Texas criticized these analogies as flawed and useless.

The analogies did not stop at simply providing ultra-expensive objects as use for comparison to guide the awards damages. Plaintiff's counsel attempted to employ an even more problematic analogy which involved awarding the Plaintiffs "two cents worth for each [decedent]" for each of the 650 million miles that Defendant New Prime Trucking Company drove during the year of the incident. The opinion heavily disagreed with this tactic as a means for arriving at an appropriate amount of damages as it completely ignores the inherent purpose of compensatory damages; namely, to compensate plaintiffs in an amount equal to the plaintiff's injury, not as a means of punishing defendants.

The opinion provided that awarding and reviewing noneconomic damages needs to be a "rational and non-arbitrary exercise" . . . and jurors should be told [by counsel] *why* a given amount of damages, or range of amounts, would be reasonable and just compensation." *Id.* at 25. The Court admitted that when dealing with compensation of mental anguish, mathematical precision is not possible. However, the Court maintained that this impossibility does not excuse the absence of a rational reason or connection to the amount of damages awarded.

Damages Must be Grounded in Evidence

Citing the 2002 decision of *Bentley v. Bunton*, the opinion held that courts do not fully discharge the duty to provide damages grounded in evidence that are designed to *compensate* the plaintiff for injury, no matter how difficult it may be, especially in awards compensating mental anguish. 94 S.W.3d 561, 606 (Tex. 2002). The Court reaffirmed that merely concluding that an award is *not* excessive because it does not "shock the conscience" does not fully discharge the duty of jurors and courts to provide non-economic damage awards that are the result of a rational effort which is grounded in evidence. *Gregory*, No. 21-0017, at 2.

The Texas Supreme Court noted that the lower court disregarded *Bentley* among other precedent (which held that evidence justifying the amount of mental anguish damages is required) by distinguishing between defamation actions and wrongful death actions. The lower court elected not to look to previous non-death cases involving mental anguish because it believed "death is different." Justice Blacklock was not convinced that this distinction makes a difference, writing that the Court does not see "any valid basis on which to carve out special rules for appellate review of noneconomic damages in wrongful death cases." *Gregory* at 11.

Economic Damages as Guidance

At the trial level, Plaintiff's counsel also asked the jury to use Deol's economic damages as a reference for both mental anguish and loss of companionship. The Texas Supreme Court also viewed this method as problematic because using economic damages as a reference would result in families of a well-paid decedent receiving a greater amount of damages relative to their mental anguish than would families of a decedent of lower economic prosperity. Rather, "the severity of mental anguish and loss of companionship felt by surviving family members does not correlate with economic status." *Id.* at 21. Therefore, awarding damages in this manner would again ignore



the inherent purpose of compensatory damages, which is to compensate plaintiffs in an amount equal to their injury suffered. To use the Plaintiff counsel's suggested method would be to suggest that families of well-paid decedents suffer greater mental anguish than the families of other decedents, which of course is not true.

The opinion does allow for certain situations where economic damages may be considered when assessing non-economic damages, stating that “[f]or example, the family of a decedent who suffers for an extended time in the hospital before passing away might suffer more mental anguish due to the strain of dealing with medical bills and insurance hassles while coping with the death of a loved one.” *Id* at 22. However, the opinion reminds that while the possibility that economic and non-economic damages may correlate or prove informative, it does not mean that they share an inherent connection or that this approach is always useful.

The Correct Approach

The Court in *Gregory* recognizes the difficulty in arriving at a precise figure when calculating the appropriate amount of damages to compensate for mental anguish. However, as a matter of principle, the Court finds it necessary that “just as evidence of the *existence* of mental anguish damages generally must establish the ‘nature, duration, and severity’ of the anguish suffered . . . the same kind of evidence . . . will also be relevant to the amount awarded.” *Id* at 23. The Court included that mere “genuine belief” that an amount is just and valid is insufficient for arriving at an amount without a reason as to why that amount is believed to be just and valid. The Court emphasized that its holding does not place any limits on the reasons by which plaintiffs might justify the amount of damages awarded, but only that a rational reason that is grounded in evidence must be given; as it is the plaintiff’s burden to prove he/she is entitled to damages. The Court gave direction by providing:

“[T]he required rational basis for award may come from evidence suggesting a quantifiable amount of damages, such as testimony about the potential financial consequences of severe emotional trauma. Or the rational basis may be revealed by lawyer argument rationally connecting the amount sought – or on appeal, the amount awarded – to the evidence.”

Id. at 24. The Court pointed to *Saenz v. Fidelity & Guar. Ins. Underwriters* to reemphasize that arguing that any amount picked by the jury, absent a rational connection, is reasonable “simply because a properly instructed jury picked the number, is to argue that a jury may ‘simply pick a number and put it in the blank.’” 925 S.W. 2d 607, 614 (Tex. 1996). *Gregory* rejects such a result. The only check on damages while employing this approach is asking whether or not the award is so excessive that the award “shocks the conscience,” an inherently subjective standard.. What the Court’s new evidence-based requirement will actually look like in litigation is, however, yet to be fully seen.



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Takeaways

Gregory provides clarity on the role of juries and courts in arriving at non-economic damage awards in cases involving emotional injury in wrongful death causes of action. However, much remains to be resolved at the trial level and in appellate courts as to what this requirement will look like in practice and litigants will be navigating the evidentiary requirements on a case-by-case basis. Plaintiffs in similar cases will have to provide specific evidence that is rationally connected reason to the amount of damages presented. Defendants must anticipate these arguments and formulate strategies for how to convince juries that the reasons presented by plaintiff’s counsel are not rationally connected or grounded in evidence. This new standard should prove helpful in curbing “nuclear” verdicts by preventing juries from making excessively large awards tied to “unsubstantiated anchoring” or awards which are excessive for purely sympathetic reasons. Nonetheless, this remains an unsettled area of law in the state of Texas and future decisions on cases of this matter will prove vital to the future of this issue.

Opinion Note

It should be noted that the prevailing opinion in *Gregory* was not unanimously supported and therefore there does not exist a full and complete consensus on the bench of the Supreme Court of Texas regarding the evidence and rational connected requirement discussed.

JUSTICE BLACKLOCK announced the Court’s judgment and delivered an opinion, in which Chief Justice Hecht and Justice Busby joined in full, and in which Justice Bland joined except as to Parts II.C.2 and II.D.

JUSTICE DEVINE filed an opinion concurring in the judgment, in which Justice Boyd joined.

JUSTICE BLAND filed an opinion concurring in part and concurring in the judgment.

Justice Lehrmann, Justice Huddle, and Justice Young did not participate in the decision.

Though complete consensus on the bench was not reached, the prevailing opinion in *Gregory* is held as primary authority on this issue moving forward and serves as controlling law.

Disclaimer/Editor’s Note

This publication is intended to provide a broad overview of the issues addressed herein. Please note that each case presents unique facts which require more in-depth and specific analysis and that the law is continually changing on the issues presented (some of which are currently pending before the Texas Supreme Court).



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